

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

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Appeal from Kershaw County

JUN 22 2015

James R. Barber, III, Circuit Court Judge  
\_\_\_\_\_

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

ANNETTA GRANT,

APPELLANT

APPELLATE CASE NO. 2014-002425  
\_\_\_\_\_

FINAL BRIEF OF APPELLANT  
\_\_\_\_\_

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred by refusing to give Appellant credit for time served since Appellant was being held in a Georgia jail because of a hold for a South Carolina charge?

## STATEMENT OF THE CASE

On May 8, 2012, Appellant was charged with breach of trust with fraudulent intent of goods valued over \$2,000 but less than \$10,000. R. 16. On May 23, 2012, the Kershaw County Grand Jury indicted Appellant for forgery, less than \$10,000, for a separate incident. R. 22. On March 6, 2014, Appellant waived presentment of the breach of trust charge to the Kershaw County Grand Jury and pled guilty to both offenses before the Honorable R. Ferrell Cothran. R. 11 - 12. Cornelius J. Riley represented Appellant. Curtis Hutchinson represented the State. R. 11 - 12. Judge Cothran imposed a concurrent sentence of four years imprisonment suspended to time served and eighteen months of probation. R. 11 - 12.

On June 30, 2014, Appellant was served with a citation for violating the terms of probation. R. 6, lines 14 – 15. On November 6, 2014, a probation revocation hearing was held before the Honorable James R. Barber. R. 1. Kristy G. Goldberg represented Appellant. R. 1. Agent L. Cook of Kershaw County Probation, Parole, and Pardon Services appeared on behalf of the State. R. 1. Judge Barber revoked Appellant's probation for the full term of four years. R. 8.

## ARGUMENT

The trial judge erred by refusing to give Appellant credit for time served since Appellant was being held in a Georgia jail because of a hold for a South Carolina charge.

### **Probation Violation Hearing**

According to the State, Appellant had not reported to the probation office since March 7, 2014, the day after she was sentenced. R. 3, line 21 – R. 4, line 1. Appellant also “had some financial problems.” R. 4, lines 2 – 4. Appellant admitted to violating the terms of her probation. She also admitted that her violation was “willful.” R. 4, lines 10 – 14.

Defense counsel requested that Appellant get credit for 179 days served in jail in Kershaw County. R. 6. Counsel also requested credit for time that Appellant was incarcerated in Dekalb County, Georgia. R. 6, lines 24. Counsel explained to the judge that Appellant was held in jail in Georgia for 365 days because South Carolina placed a hold on her for a pending charge. R. 6 – 7. After 365 days, Appellant was extradited to South Carolina, where she pled guilty to the pending charge and received a probationary sentence. R. 7. Citing Blakeney v. State, 339 S.C. 86, 529 S.E.2d 9 (2000), counsel argued that Appellant was entitled to credit for the 365 days that she was held in the Georgia jail. R. 7.

Judge Barber found that Appellant’s violations were willful and gave her credit for all of the time served in South Carolina, 179 days. R. 7 – 8. However, the judge did not give Appellant credit for the time served in Georgia. R. 8.

### **Discussion**

The trial judge erred by failing to give Appellant credit for time served while Appellant was incarcerated in Dekalb County, Georgia due to a hold. Appellant was incarcerated while the underlying charge for which she was placed on probation was pending in South Carolina but before

Appellant pled guilty to the charge in South Carolina and received probation, which was later revoked in full.

Under S.C. Code Ann. § 24-13-40, in every case in which time served by a prisoner is computed,

“[F]ull credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.”

While the statute does not explicitly address the issue of awarding credit for time served in another jurisdiction on unrelated charges, the S.C. Supreme Court has addressed this issue.

In State v. Blakeney, 339 S.C. 86, 529 S.E.2d 9 (2000), Blakeney committed armed robbery in Beaufort County on August 19, 1992. On August 21, 1992, he was arrested and put in jail in Berkeley County on unrelated charges. Id. at 87, 529 S.E.2d at 10. Beaufort County placed a “hold” on Blakeney on August 31, 1992 and issued an arrest warrant the next day, September 1. Id.

In late 1993, Berkeley County dismisses its charges against Blakeney. On December 2, 1993, he was arrested on the Beaufort county armed robbery. Id. He was convicted and sentenced on the robbery in February 1994. Id.

The Court found that “[a]s of September 1, 1992, [Blakeney] was confined (through the ‘hold’) and charged with the Beaufort County robbery.” Id. at 88, 529 S.E.2d at 11. If Beaufort had executed the arrest warrant, Blakeney would have been entitled to a bond. Id. at 89, 529 S.E.2d at 11. However, if he was unable to make bond, he would have remained in jail and would have been

awarded credit for the time that he spent in jail awaiting trial. Id. The Court held that Blakeney was entitled to credit for the time served in jail in Berkeley County as of September 1, 1992. Id.

Our Supreme Court has also held that an inmate is entitled to credit for time served in another state while awaiting trial on pending charges in South Carolina. In State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (1974), Dozier was arrested in Georgia for several offenses. Dozier was cleared of all charges on November 9, 1972, however, Dorchester County had placed a detainer on Dozier prior to the charges being cleared. Id. at 272, 210 S.E.2d at 227. Dozier could not post bond and contested extradition to South Carolina until July 13, 1973 when he waived it. Id. After extradition, Dozier was transported to Dorchester County where he was ultimately convicted and sentenced. Id. The trial judge refused to give Dozier credit for the 244 days that he served in jail in Georgia. Id.

The statutory amendment which entitled an inmate to credit for jail time served prior to trial, “as a matter of right,” was enacted on April 6, 1973. Id. Therefore, according to the Court, Dozier “was entitled to credit for the pre-conviction jail time spent in the State of Georgia, but such should be reckoned only from April 6, 1973.” Id. at 273, 210 S.E.2d at 227.

The Court has clearly expressed that the code section granting credit for time served, as a right, is **mandatory**. See Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000) (holding that “[s]ection 23-13-40 mandates a prisoner be given credit for all time served prior to trial unless one of two exceptions exist: 1) either the prisoner was an escapee or 2) the prisoner was already serving a sentence on another offense.”).

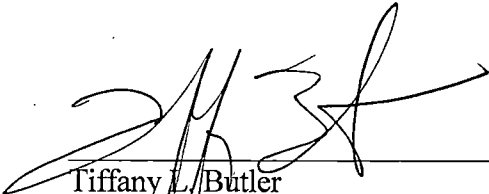
Here, neither exception applies to Appellant’s case. For 365 days, **this** State had a hold placed on Appellant because of the breach of trust charge. Therefore, under Blakeney, Appellant was “confined” as a result of the hold placed on her.

Because section 23-13-40 mandates an inmate be given credit for pre-trial detention, providing the two exceptions do not apply, Appellant should have been given credit for **all** jail time served before pleading guilty, including time served in Georgia. By refusing to give credit, the judge denied Appellant her statutory right.

CONCLUSION

For the grounds argued, Appellant Annetta Grant respectfully requests this Court to order that Appellant be given credit for the 365 days served in Georgia towards her current sentence in the South Carolina Department of Corrections for breach of trust with fraudulent intent.

Respectfully submitted,



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Tiffany L. Butler  
Appellate Defender

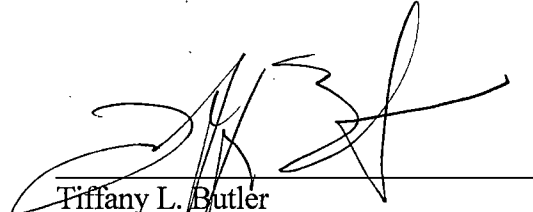
ATTORNEY FOR APPELLANT

This 22<sup>nd</sup> day of June, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

June 22, 2015



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THE STATE,

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APPELLANT

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Matthew Buchanan, Esquire, at South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250. this 22<sup>nd</sup> day of June, 2015.



Tiffany L. Butler  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 22nd day of June, 2015.

 (L.S.)  
Notary Public for South Carolina  
My commission expires: October 30, 2022.